IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1459 of 1998

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PURSHOTTAM LALLUBHAI PATEL

Versus

FEDERATION OF CO OPERAT. STORES LTD

Appearance:

MR AM RAVAL for Petitioner

MR RD DAVE for Respondent No. 1 & 2.

Ms.Harsha Dewani, AGP for Respondent No. 3, 4, 5

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 07/12/2000

ORAL JUDGEMENT

The petitioner was employed as a Manager on 23.5.89 as Manager in the respondent Federation of Co-operative Stores Ltd, which is a cooperative society governed under the provisions of Gujarat Cooperative Societies Act, 1961.

2. In exercise of power under Section 76-B of the Act, the District Registrar after show-cause notice and hearing, removed the petitioner from the office of the Manager holding that he was negligent in performance of

his duties. After passing the impugned order of removing him from service, in accordance with sub-section 2 of Section 76-B, he was debarred from employment in any other cooperative society for a period of 3 years. On the allegations of dereliction of duties as Manager, the proceedings were initiated against the petitioner alongwith other employees of the Cooperative society. Under Section 93 of the Act, the officer and servants found negligent in discharge of their duties can be held liable to reimburse the society for any loss caused as a result of misappropriation or breach of trust committed by the officer or servant. In proceedings under Section 93, the Inquiry Officer has recorded evidence and held a detailed inquiry. By his report dated 6.6.1994 he exonerated the petitioner of the allegations of various acts of ommissions or irregularities. He was found guity of only some minor lapses.

3. Against the impugned order of removal passed on 21.1.1991, the petitioner preferred an appeal to the Additional Registrar, (Appeals) who by order dated 30.3.96 came to the conclusion that since in the inquiry the petitioner was not found guilty of any major misconduct and the period of 3 years of his disqualification being over, the Additional District Registrar, Cooperative Societies should reconsider his case. The Additional Registrar (Appeals) by order dated 30.3.96 remanded the matter to the District Registrar. On remand, the District Registrar by his order dated 25.4.97 granted relief of reinstatement in service to the petitioner. The District Registrar formed an opinion that in proceedings under Section 93, the Inquiry Officer had not found any serious lapses on the part of the petitioner. He had already suffered the order of removal being out of service since last more than 6 years.

4. Against the order of the District Registrar granting relief of reinstatement to the petitioner, the society went up in appeal to the Additional Registrar, (Appeals). The Additional Registrar (Appeals) by his order dated 14.5.97 set aside the order of the District Registrar by holding that the relief of reinstatement was not called for as a dispute had already been raised under Section 96 of the Act by the parties on the subject matter of misconduct or alleged misdeed committed by the petitioner as Manager. The petitioner then approached the Revisional Authority i.e. the State Government. Acting through the concerned Minister of the Department, the Revisional Authority by impugned order dated 22.1.98 rejected the revision of the petitioner and maintained the order of the Additional Registrar (Appeals).

5. Learned Counsel Shri A.M.Raval appearing for the petitioner took me through the report of the Inquiry Officer in proceedings of recovery of loss under Section 93 of the Act and pointed out that except for some minor lapses in relation to Charges Nos. 1 or 2, all the major charges were not found proved against the petitioner and he was exonerated.

6. On behalf of the petitioner, the Learned Counsel maintains that the Additional Registrar, Appeals had sent the matter to the District Registrar to reconsider the action of removal of the petitioner and in exercise of that power, the District Registrar granted relief of reinstatement. It was, therefore, wrong on the part of the Additional Registrar and the State Government acting through the concerned Minister to come to a conclusion that the District Registrar had erred in granting the relief of reinstatement to the petitioner only because a dispute under Section 96 on the same subject matter was pending between the society and the petitioner.

7. Learned Counsel Shri Rajesh D Dave appearing for the society made strenuous efforts to support the orders passed by the Additional Registrar and the Revisional Authority. It is submitted that the proceedings under Section 93 for recovery of loss and proceedings in a dispute raised by the society under Section 96 are totally different in their scope. It is submitted that the District Registrar took into consideration the relevant fact that the order of removal was passed only for a period of 3 years. It is submitted that the period of 3 years was referrable to sub-section 2 of Section 76-B whereby the Authority, who had removed the Manager from service, could further direct that the Manager would be debarred from getting any employment in any other society for a definite period.

8. Mr.A.M.Raval, Learned Counsel on behalf of the Society also pointed out that in proceedings under Section 76-B the petitioner having been found guilty of misconduct and negligence in discharge of his duties, on the basis of subsequent proceedings under Section 93 of the Act, the action of removal from service cannot be set aside.

9. I have considered the submissions made by the Counsel for the petitioner and the society and I have also perused the records. It cannot be disputed in law that the scope of proceedings under Section 76-B of removing the guilty officer, proceedings against him under Section

93 for recovery of loss by surcharging him and dispute under Section 96 between cooperative society and its employee are three distinct proceedings.

10. The relevant provisions need to be noticed to see the distinction between three different kinds of proceedings:-

"76B. Removal of office - (1) If, in the opinion of the Registrar, any officer makes persistent default or is negligent in performance of the duties imposed on him by this Act or the rules or the bye-laws or does anything which is prejudicial to the interests of the society or where he stands disqualified by or under this Act, the Registrar may, after giving the officer an opportunity of being heard, by order remove such officer and direct the society to elect or appoint a person or a qualified member in the vacancy caused by such removal and the officer so elected or appointed shall hold office so long only as the officer in whose place he is elected or appointed would have held if the vacancy had not occurred.

(2) The Registrar may, by order, direct that the officer so removed shall be disqualified to hold or to contest election for any office in the society from which he is removed and in any other society for a period not exceeding four years from the date of the order and such officer shall stand disqualified accordingly."

"93. Power of Registrar to assess damages against delinquent, promoters,etc.

(1) Where, in the course of or as a result of an audit under section 84, or an inquiry under section 86 or an inspection under section 87, or the winding up of a society, the Registrar is satisfied on the basis of the report made by the auditor or the person authorised to make inquiry under section 86 or the person authorised to inspect the books under section 87, or the Liquidator under

section 110, that any person who has taken any part, in the organisation or management of the society or any deceased, or past or present officer of the society has within a period of five years prior to the date of such audit, inquiry, inspection or order for winding up, misapplied or retained, or become liable or accountable for, any money or property of the society, or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar or a person authorised by him in that behalf may investigate the conduct of such person or persons and after framing charges against such person or persons, and after giving a reasonable opportunity to the person concerned and in the case of a deceased person to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or part thereof, with interest at such rate as the Registrar or the person authorised under this section may determine, or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust, as he may determine.

(2) The Registrar or the person authorised under sub-section (1) in making any order under this section, may provide therein for the payment of the costs or any part thereof such investigation, as he thinks just, and he may direct that such costs or any part thereof shall be recovered from the person against whom the order has been issued.

(3) This section shall apply, notwithstanding that the act is one for which the person concerned may be criminally responsible."

"96. Disputes:

(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, management or business of a society shall

be referred in the prescribed form either by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, to the Registrar, if the parties thereto are from amongst the following:-

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society;

(b) a member, past member or a person claiming through a member, past member or a deceased member of a society, or a society which is a member of the society;

(c) a person, other than a member of the society, who has been granted loan by the society, or with whom the society has or had transactions under the provisions of section 46, and any person claiming through such a person;

(d) a surety of a member, past member or a deceased member, or a person other than a member who has been granted a loan by the society under Section 46, whether such a surety is or is not a member of the society;

(e) any other society, or the Liquidator of such a society.

(2) When any question arises whether for the purposes of sub-section (1) a matter referred to for decision is a dispute or not, the question shall be considered by the Registrar, whose decision shall be final."

11. It is not disputed that the entire action against the petitioner was founded on the Audit Inquiry Report in which certain irregularities were found to have been committed by the petitioner as Manager with the other staff subordinate to him. After action of his removal, on the same alleged financial irregularities proceedings under Section 93 were initiated although the Inquiry Officer has exonerated the petitioner substantially from all major charges. When the matter was heard by the Additional Registrar, (Appeals) in the year 1996, there was an inquiry report under Section 76-B of the Act partly in favour of the petitioner. The Additional Registrar, (Appeals) therefore remanded the matter to the District Registrar for re-consideration for the case of the petitioner. The District Registrar after remand of the case to him in accordance with the directions contained therein reconsidered the case of the petitioner and reinstated him in service on the basis of the inquiry report under Section 93. The Additional Registrar and the Secretary, Revenue as Revisional Authority has interfered with the order of the District Registrar on the ground that such order of reinstatement should not have been passed when a dispute under Section 96 which was raised by the society was pending against the petitioner. The other ground stated by the respondent authority in upsetting the order of the District Registrar is that the District Registrar virtually exercised power of review which he did not possess.

12. As I have mentioned above, the District Registrar did not exercise any power of review on his own. He was directed to reconsider the matter under the order of remand made by the Appellate Authority. He was therefore fully within his power and jurisdiction in reconsidering his case. Mere pendency of dispute under Section 96 between the petitioner and the society could not be taken to be an obstruction in deciding the case under Section 76-B of removal of the petitioner from service. The Additional Registrar after remand of the case in exercise of his powers had set aside the order of removal and directed the reinstatement of the petitioner. It cannot be held that in doing so any error of jurisdiction or law was committed by him. The Appellate Authority and the Revisional Authority therefore were not justified in interfering with his action.

13. Consequently, this petition succeeds and is hereby allowed. The impugned order dated 22.1.98 (Annexure I) of the Revisional Authority and the order dated 14.1.97 of the Additional Registrar (Appeals) (Annexure H) are hereby set aside. With the result the

order of the District Registrar dated 25.4.97 at Annexure G is hereby restored. Rule made absolute. In the facts and circumstances of the case, there shall be no order as to costs.

(D.M.Dharmadhikari, CJ)

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